

APPEAL NO. 041501
FILED AUGUST 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 20, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, does not include tears of the medial and lateral menisci of the right knee and that the appellant (claimant) did not have disability resulting from the injury sustained on _____. The claimant appealed, arguing that the hearing officer's extent-of-injury and disability determinations are not supported by sufficient evidence. The respondent (carrier) responded, urging affirmance.

DECISION

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Records of the Commission indicated that the hearing officer's decision was mailed to the claimant on May 27, 2004, at the address supplied by the claimant. Pursuant to Rule 102.5(d) the claimant was deemed to have received the hearing officer's decision five days later, or on June 1, 2004. Although the claimant asserts in his appeal that he received the hearing officer's decision on June 2, 2004, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus the deemed date of receipt is June 1, 2004.

With the deemed date of receipt of June 1, 2004, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than June 22, 2004. The claimant sent his appeal both by facsimile transmission (fax) on June 23, 2004,

received by the Commission that same date, and by mail, postmarked June 24, 2004, and received by the Commission on June 29, 2004. In that claimant's appeal was neither faxed or mailed on or before June 22, 2004, the claimant's appeal was not timely filed.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge